

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

**Plaintiff**

V.

CRIMINAL 05-0133 (CCC)

[6] LUIS D. MARTÍNEZ-RUIZ,

### Defendant

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
RE: RULE 11(c)(1)(B) PROCEEDINGS (PLEA OF GUILTY)

## I. Personal Background

On May 3, 2005, Luis D. Martínez-Ruiz, the defendant herein, was charged in a two count-indictment. The defendant agrees to plea guilty to count one of the indictment.

Count one charge the defendant with knowingly, unlawfully and intentionally, combining, conspiring, confederating and agreeing to possess with the intent to distribute more than five kilograms of cocaine, 50 grams or more of cocaine base ("crack"), both Schedule II Narcotic Drug Controlled Substances, and one kilogram or more of heroin, a Schedule I Narcotic Drug Controlled Substance, in violation of 21 U.S.C. § 846.

Defendant filed a motion for change of plea on May 12, 2006.

II. Consent to Proceed Before a Magistrate Judge

On June 7, 2006, while assisted by Alexander Zeno, Esq., the defendant, by consent, appeared before me in order to change his previous not guilty plea to a plea of guilty as to count one of the indictment.

In open court the defendant was questioned as to the purpose of the hearing being held. The defendant responded that the purpose of the hearing was to plead

1 CRIMINAL 05-0133 (CCC)

2

3 guilty. The defendant was advised of his right to have all proceedings, including the  
4 change of plea hearing, before a United States district judge. Defendant was given  
5 notice of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries  
6 were to be conducted under oath and that it was expected that his answers would  
7 be truthful (he was also explained that the consequences of lying under oath could  
8 lead to a perjury charge); and (c) his right to have the change of plea proceedings  
9 presided over by a district judge instead of a magistrate judge. The defendant was  
10 also explained the differences between the appointment and functions of the two.  
11 The defendant consent to proceed before this magistrate judge.

12 III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

13 A. Compliance With Requirements Rule 11(c)(1)

14 Rule 11 of the Federal Rules of Criminal Procedure governs the  
15 acceptance of guilty pleas to federal criminal violations. Pursuant to  
16 Rule 11, in order for a plea of guilty to constitute a valid waiver of the  
17 defendant's right to trial, guilty pleas must be knowing and voluntary:  
18 "Rule 11 was intended to ensure that a defendant who pleads guilty  
19 does so with an 'understanding of the nature of the charge and  
20 consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4  
(1<sup>st</sup> Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467  
(1969)). [There are three core concerns in these proceedings]: 1)  
absence of coercion; 2) understanding of the charges; and 3) knowledge  
of the consequences of the guilty plea. United States v. Cotal-Crespo, 47  
F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1<sup>st</sup>  
Cir. 1991)).

21 United States v. Hernández-Wilson, 186 F.3d 1, 5 (1<sup>st</sup> Cir. 1999).

22 In response to further questioning, defendant was explained and he  
23 understood that if convicted on count one, he was exposed to a minimum term of  
24 five years imprisonment and to a maximum term of 40 years, a fine of not more than  
25 \$2,000,000, and a term of supervised release of at least four years. The court must  
26 impose a mandatory penalty assessment of \$100, per offense, to be deposited in the  
27 Crime Victim Fund, pursuant 18 U.S.C. 3013(a).

28

1 CRIMINAL 05-0133 (CCC)

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Defendant was advised that the ultimate sentence was a matter solely for the court to decide in its discretion and that, even if the maximum imprisonment term and fine were to be imposed upon him, he later could not withdraw his guilty plea if he was unhappy with the sentence of the court. The defendant understood this.

Defendant was explained what the supervised release term means. It was emphasized that cooperation with the United States Probation officer would assist the court in reaching a fair sentence.

Emphasis was made on the fact that at this stage, no prediction or promises as to the sentence to be imposed could be made by anyone. Defendant responded to questions in that no promises, threats, inducements or predictions as to what sentence will be imposed have been made to him.

#### B. Admonishment of Constitutional Rights

To assure defendant's understanding and awareness of his rights, defendant was advised of his right:

1. To remain silent at trial and be presumed innocent, since it is the government who has the burden of proving his guilt beyond a reasonable doubt.

2. To testify or not to testify at trial, and that no comment could be made by the prosecution in relation to his decision not to testify.

3. To a speedy trial before a district judge and a jury, at which he would be entitled to see and cross examine the government witnesses, present evidence on his behalf, and challenge the government's evidence.

4. To have a unanimous verdict rendered by a jury of twelve persons which would have to be convinced of defendant's guilt beyond a reasonable doubt by means of competent evidence.

1 CRIMINAL 05-0133 (CCC)

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5. To use the subpoena power of the court to compel the attendance of  
witnesses.

Upon listening to the defendant's responses, observing his demeanor and his  
speaking with his attorney, that to the best of counsel's belief defendant had fully  
understood his rights, it is determined that defendant is aware of his constitutional  
rights.

#### C. Consequences of Pleading Guilty

Upon advising defendant of his constitutional rights, he was further advised  
of the consequences of pleading guilty. Specifically, defendant was advised that by  
pleading guilty and upon having his guilty plea accepted by the court, he will be  
giving up the above rights and would be convicted solely on his statement that he is  
guilty.

Furthermore, the defendant was admonished of the fact that by pleading guilty  
he would not be allowed later on to withdraw his plea because he eventually might  
disagree with the sentence imposed, and that when he were under supervised  
release, and upon violating the conditions of such release, that privilege could be  
revoked and he could be required to serve an additional term of imprisonment. He  
was also explained that parole has been abolished.

#### D. Plea Agreement

The parties have entered into a written plea agreement that, upon being signed  
by the government, defense attorney and defendant, was filed and made part of the  
record. Defendant was clearly warned and recognized having understood that:

1. The plea agreement is not binding upon the sentencing court.
2. The plea agreement is an "agreement" between the defendant, defense  
attorney and the attorney for the government which is presented as a

1 CRIMINAL 05-0133 (CCC)

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5

recommendation to the court in regards to the applicable sentencing adjustments and guidelines, which are advisory.

3. The agreement provides a sentencing recommendation and/or anticipated sentencing guideline computation, that can be either accepted or rejected by the sentencing court.

4. In spite of the plea agreement and any sentencing recommendation contained therein, the sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the possible maximum penalty prescribed by statute.

Defendant acknowledged having understood this explanation.

E. Government's Evidence (Basis in Fact)

The government presented a proffer of its evidence with which the defendant concurred.

Accordingly, it is determined that there is a basis in fact and evidence to establish all elements of the offense charged.

F. Voluntariness

The defendant accepted that no leniency had been promised, no threats had been made to induce him to plead guilty and that he did not feel pressured to plead guilty. He came to the hearing for the purpose of pleading guilty and listened attentively as the prosecutor outlined the facts which it would prove if the case had proceeded to trial.

IV. Conclusion

The defendant, by consent, has appeared before me pursuant to Rule 11, Federal Rules of Criminal Procedure, and has entered a plea of guilty as to count one of the indictment.

1 CRIMINAL 05-0133 (CCC)

6

3 After cautioning and examining the defendant under oath and in open court,  
4 concerning each of the subject matters mentioned in Rule 11, as described in the  
5 preceding sections, I find that the defendant Luis D. Martínez-Ruiz is competent to  
6 enter this guilty plea, is aware of the nature of the offense charged and the  
7 maximum statutory penalties that the same carries, understands that the charge is  
8 supported by the government's evidence, has admitted to every element of the  
9 offense charged, and has done so in an intelligent and voluntary manner with full  
10 knowledge of the consequences of his guilty plea.

11 Therefore, I recommend that the court accept the guilty plea of the defendant  
12 and that the defendant be adjudged guilty as to count one of the indictment.

13 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B)  
14 and Rule 72(d) of the Local Rules of Court. Any objections to the same must be  
15 specific and must be filed with the Clerk of Court within five (5) days of its receipt.  
16 Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific  
17 objections to the report and recommendation is a waiver of the right to review by the  
18 district court. United States v. Valencia-Copete, 792 F.2d 4 (1<sup>st</sup> Cir. 1986).

19 At San Juan, Puerto Rico, this 8<sup>th</sup> day of June, 2006.

21 S/ JUSTO ARENAS  
22 Chief United States Magistrate Judge

23

24

25

26

27

28